

THE ROSEN LAW FIRM, P.A.

Laurence M. Rosen, Esq. (SBN 219683)
 355 South Grand Avenue, Suite 2450
 Los Angeles, CA 90071
 Telephone: (213) 785-2610
 Facsimile: (213) 226-4684
 Email: lrosen@rosenlegal.com

[Proposed] Lead Counsel for Plaintiff and the Class

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

PIOTR JASZCZYSZYN, Individually and on Behalf of All Others Similarly Situated,	)	Case No. 4:22-cv-00956-HSG
)	
Plaintiff,	)	NOTICE OF MOTION AND
	)	MOTION OF DEMING SONG FOR
v.	)	APPOINTMENT AS LEAD
	)	PLAINTIFF AND APPROVAL OF
SUNPOWER CORPORATION, PETER	)	COUNSEL; MEMORANDUM OF
FARICY, and MANAVENDRA S. SIAL,	)	POINTS AND AUTHORITIES IN
	)	SUPPORT THEREOF
Defendants.	)	<u>CLASS ACTION</u>
)	
	)	Judge: Haywood S. Gilliam, Jr.
	)	Hearing: October 6, 2022
	)	Time: 2:00 p.m.
	)	Courtroom: 2 – 4th Floor (Oakland)
)	

PLEASE TAKE NOTICE that on October 6, 2022 at 2:00 p.m. before the Honorable Haywood S. Gilliam, Jr., movant Deming Song (“Movant”) will and does move this Court for an order granting the Motion: (a) appointing Movant as Lead Plaintiff; and (b) approving Movant’s selection of The Rosen Law Firm, P.A. (“Rosen Law”) as Lead Counsel.

This Motion is brought pursuant to Section 21D(a)(3)(B) of the Securities Exchange Act of 1934 (the “Exchange Act”), as amended by the Private Securities Litigation Reform Act of 1995 (the “PSLRA”), on the grounds that: (1) Movant should be appointed as Lead Plaintiff for the class of persons and entities that purchased or otherwise acquired SunPower Corporation

1 (“SunPower” or the “Company”) securities between August 3, 2021 and January 20, 2022,
 2 inclusive (the “Class Period”), as Movant timely made this Motion, has the largest financial
 3 interest, and otherwise satisfies the pertinent requirements of Federal Rule of Civil Procedure 23;
 4 and (2) Movant’s selection of Rosen Law as Lead Counsel should be approved as the firm is well-
 5 qualified with extensive experience in cases of this type.

6 In support of this Motion, Movant files herewith a memorandum of points and authorities,
 7 the Declaration of Laurence M. Rosen, the certification of Laurence M. Rosen pursuant to L.R.
 8 3-7(d), a certification pursuant to L.R. 3-15, and a proposed order.

9 **MEMORANDUM OF POINTS AND AUTHORITIES**

10 Movant respectfully submits this memorandum in support of their motion for an Order,
 11 pursuant to Section 21D of the Exchange Act, as amended by the PSLRA:

12 (1) appointing Movant as Lead Plaintiff for all persons other than defendants who
 13 purchased the securities of SunPower in the Class Period, seeking to recover damages caused by
 14 Defendants’ violations of the federal securities laws (the “Class”); and

15 (2) appointing Rosen Law as Lead Counsel for the Class.

16 **I. STATEMENT OF ISSUES TO BE DECIDED**

17 (1) Whether the Court should appoint Movant as Lead Plaintiff pursuant to 15 U.S.C.
 18 78u-4(a)(3)(B); and

19 (2) Whether the Court should approve Movant’s selection of Rosen Law as Lead
 20 Counsel for the class pursuant to 15 U.S.C. 78u-4(a)(3)(B)(v).

21 **II. CLAIMS ASSERTED**

22 This action was commenced on February 16, 2022 against Defendants for violations of
 23 Sections 10(b) and 20(a) of the Exchange Act, and Rule 10b-5 promulgated thereunder. That same
 24 day, an early notice pursuant to the PSLRA was issued, advising potential Class members of,
 25 among other things, the claims alleged in the action and the 60-day deadline for Class members
 26 to move to be appointed as lead plaintiff. A copy of the early notice is attached as Exhibit 1 to the
 27 Declaration of Laurence M. Rosen filed herewith (“Rosen Decl.” or “Rosen Declaration”).
 28

1 SunPower is a solar energy company that provides hardware, software, and financing
 2 options for customers. It also provides “Smart Energy” solutions as part of its initiative to add
 3 layers of intelligent control to homes, buildings, and grids through personalized customer
 4 interfaces. It operates under two segments: Residential, Light Commercial (“RLC”), which refers
 5 to sales of solar energy solutions; and Commercial and Industrial Solutions (“C&I Solutions”),
 6 which refers to direct sales of turn-key engineering, procurement, and construction services, as
 7 well as sales of energy under power purchase agreements.

8 The complaint alleges that throughout the Class Period, Defendants made false and/or
 9 misleading statements and/or failed to disclose that: (1) that certain connectors used by SunPower
 10 suffered from cracking issues; (2) that, as a result, the Company was reasonably likely to incur
 11 costs to remediate the faulty connectors; (3) that, as a result of the foregoing, SunPower’s
 12 financial results would be adversely impacted; and (4) that, as a result of the foregoing,
 13 Defendants’ positive statements about the Company’s business, operations, and prospects were
 14 materially misleading and/or lacked a reasonable basis.

15 On January 20, 2022, SunPower announced that it had “identified a cracking issue that
 16 developed over time in certain factory-installed connectors.” The Company said that it “expects
 17 approximately \$27 million of supplier-quality related charges in fourth quarter 2021 and
 18 approximately \$4 million in the first quarter of 2022” to replace the faulty connectors.

19 On this news, the Company’s share price fell \$3.22, or 16.9%, to close at \$15.80 per share
 20 on January 21, 2022, on unusually heavy trading volume. As a result of Defendants’ wrongful
 21 acts and omissions, and the precipitous decline in the market value of the Company’s securities,
 22 Plaintiff and other Class members have suffered significant losses and damages.

23 **III. ARGUMENT**

24 **1. Movant Should Be Appointed Lead Plaintiff**

25 The PSLRA sets forth procedures for the selection of Lead Plaintiff in class actions
 26 brought under the Exchange Act. 15 U.S.C. § 78u-4(a)(3)(B). The PSLRA directs courts to
 27 consider any motion to serve as Lead Plaintiff filed by class members in response to a published
 28

notice of class action by the later of (i) 90 days after the date of publication, or (ii) as soon as practicable after the Court decides any pending motion to consolidate. 15 U.S.C. § 78u-4(a)(3)(B).

The PSLRA provides a “rebuttable presumption” that the most “adequate plaintiff” to serve as Lead Plaintiff is the “person or group of persons” that:

(aa) has either filed the complaint or made a motion in response to a notice . . . ;

(bb) in the determination of the Court, has the largest financial interest in the relief sought by the class; and

(cc) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure.

15 U.S.C. § 78u-4(a)(3)(B)(iii).

As set forth below, Movant satisfies the above criteria, having the largest financial interest of any movant in this litigation, and is therefore the most adequate plaintiff and should be appointed as Lead Plaintiff.

A. Movant Is Willing to Serve as Class Representative

Movant timely filed the instant motion in response to a PSLRA early notice, and filed herewith a PSLRA certification attesting that Movant is willing to serve as a representative of the Class and is willing to provide testimony at deposition and trial, if necessary. *See* Rosen Decl., Ex. 2. Accordingly, Movant satisfies the first requirement to serve as Lead Plaintiff for the Class.

B. Movant Has the Largest Financial Interest in the Action

The PSLRA requires a court to adopt a rebuttable presumption that “the most adequate plaintiff . . . is the person or group . . . that . . . has the largest financial interest in the relief sought by the class.” 15 U.S.C. § 78u-4(a)(3)(B)(iii). While the PSLRA does not specify precisely how to calculate the “largest financial interest,” the movant’s approximate losses in the subject securities is the best measure. *Richardson v. TVIA, Inc.*, 2007 WL 1129344 at * 4 (N.D. Cal. Apr. 16, 2007) (citing cases).

Movant lost approximately \$105,881.41 in connection with purchases of SunPower securities. *See* Rosen Decl., Ex. 3 (Movant’s Loss Chart). Accordingly, Movant satisfies the largest financial interest requirement to be appointed as Lead Plaintiff for the Class.

C. Movant Satisfies the Requirements of Rule 23 of the Federal Rules of Civil Procedure

Section 21D(a)(3)(B)(iii)(I)(cc) of the PSLRA further provides that, in addition to possessing the largest financial interest in the outcome of the litigation, the Lead Plaintiff must “otherwise satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure.” Federal Rule of Civil Procedure Rule 23(a) provides that a party may serve as a class representative if the following four requirements are satisfied:

(1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a).

In making its determination that a movant satisfies the requirements of Rule 23, the Court need not raise its inquiry to the level required in ruling on a motion for class certification—a *prima facie* showing that Movant satisfies the requirements of Rule 23 is sufficient. *Cavanaugh*, 306 F.3d at 730-31. At the lead plaintiff stage, “[t]he typicality and adequacy requirements of Rule 23 are the main focus...” and “[e]xamination of the remaining requirements [of Rule 23] are deferred until the lead plaintiff moves for class certification.” *Richardson*, 2007 WL 1129344, at * 4 (citing *Cavanaugh*, 306 F.3d at 730).

Movant fulfills all of the pertinent requirements of Rule 23. Movant shares substantially similar questions of law and fact with the members of the Class, and Movant’s claims are typical of the members of the Class. Movant and all members of the Class allege that Defendants violated the Exchange Act by publicly disseminating false and misleading statements about the Company and its business. Movant, as did all of the members of the Class, purchased the Company’s securities at prices artificially inflated due to Defendants’ misrepresentations and omissions, and was damaged thereby. These shared claims also satisfy the requirement that the claims of the representative parties be typical of the claims of the Class.

Thus, the close alignment of interests between Movant and other Class members, and Movant's desire to prosecute this action on behalf of the Class, provides ample reason to appoint Movant as Lead Plaintiff.

D. Movant Will Fairly and Adequately Represent the Interests of the Class and Is Not Subject to Unique Defenses

The presumption in favor of appointing Movant as Lead Plaintiff may be rebutted only upon proof "by a purported member of the plaintiffs' class" that the presumptively most adequate plaintiff:

(aa) will not fairly and adequately protect the interests of the class; or

(bb) is subject to unique defenses that render such plaintiff incapable of adequately representing the class.

15 U.S.C. § 78u-4(a)(3)(B)(iii)(I).

Movant's ability and desire to fairly and adequately represent the Class has been discussed above. Movant is not aware of any unique defenses that Defendants could raise against Movant that would render Movant inadequate to represent the Class. Movant has 22 years of investing experience. He is 74 years old and lives in New York. He has a PhD and master's degree and is currently retired. Prior to his retirement, Movant was a scientist with the Food and Drug Administration. Accordingly, the Court should appoint Movant as Lead Plaintiff for the Class.

2. Movant's Selection of Counsel Should Be Approved

The PSLRA vests authority in the Lead Plaintiff to select and retain lead counsel, subject to the approval of the Court. 15 U.S.C. § 78u-4(a)(3)(B)(v). The Court should only interfere with the Lead Plaintiff's selection when necessary "to protect the interests of the class." 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II)(aa).

Movant has selected Rosen Law as Lead Counsel. The firm has been actively researching the Class' and the Movant's claims, reviewing publicly available financial and other documents and gathering information in support of the claims against the Defendants. Furthermore, the firm is experienced in the area of securities litigation and class actions, having been appointed as lead counsel in securities class actions in this District and in numerous courts throughout the nation.

1 Rosen Law has prosecuted securities fraud class actions and other complex litigation and has
2 obtained substantial recoveries on behalf of investors. Rosen Law's firm resume is attached as
3 Exhibit 4 to the Rosen Declaration.

4 As a result of the firm's experiences in litigation involving issues similar to those raised
5 in this action, Movant's counsel has the skill and knowledge that will enable it to prosecute this
6 action effectively and expeditiously. Thus, the Court may be assured that by approving Movant's
7 selection of counsel, the members of the Class will receive the best legal representation available.

8 **IV. CONCLUSION**

9 For the foregoing reasons, Movant respectfully requests that the Court issue an Order: (1)
10 appointing Movant as Lead Plaintiff of the Class; (2) approving Rosen Law as Lead Counsel; and
11 (3) granting such other relief as the Court may deem to be just and proper.

12
13 Dated: April 18, 2022

Respectfully submitted,

14 **THE ROSEN LAW FIRM, P.A.**

15 /s/Laurence M. Rosen

16 Laurence M. Rosen, Esq. (SBN 219683)

355 South Grand Avenue, Suite 2450

17 Los Angeles, CA 90071

Telephone: (213) 785-2610

18 Facsimile: (213) 226-4684

Email: lrosen@rosenlegal.com

19
20 *[Proposed] Lead Counsel for Plaintiff and the Class*

21 **THE SCHALL LAW FIRM**

Brian Schall, Esq.

22 2049 Century Park East, Suite 2460

23 Los Angeles, CA 90067

Telephone: (310) 301-3335

24 Fax: (213) 519-5876

Email: brian@schallfirm.com

25
26 *Additional Counsel for Movant*

PROOF OF SERVICE

I, Laurence M. Rosen, hereby declare under penalty of perjury as follows:

I am the managing attorney of The Rosen Law Firm, P.A., with offices at 355 South Grand Avenue, Suite 2450, Los Angeles, CA 90071. I am over the age of eighteen.

On April 18, 2022, I electronically filed the following **NOTICE OF MOTION AND MOTION OF DEMING SONG FOR APPOINTMENT AS LEAD PLAINTIFF AND APPROVAL OF COUNSEL; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** with the Clerk of the Court using the CM/ECF system which sent notification of such filing to counsel of record.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on April 18, 2022.

/s/Laurence M. Rosen
Laurence M. Rosen